

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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***Ex parte*** BERNICE E. CASEY et al.

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Appeal No. 1997-2865  
Application 08/113,789

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ON BRIEF

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Before KRASS, BARRETT and FLEMING, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge.***

**DECISION ON APPEAL**

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Application 08/113,789

This is a decision on appeal from the final rejection of claims 1, 2 and 4 through 7. Claims 3 and 8 through 15 have been cancelled.

The invention relates to a method for providing a common hardware system console interface for controlling a number of different data processing systems.

Independent claim 1 is reproduced as follows:

1. A method for obtaining common operational control in a data processing system by providing a common operational control interface (user interface) at an operator console utilized for controlling a plurality of control functions for a plurality of diverse central processing complexes (CPCs) at a computer installation, wherein underlying processes are utilized in the CPCs to perform said plurality of control functions for a console operator (user), each selected CPC being the same as or diverse from any other CPC in the computer installation, said method comprising the steps of:

storing a library of programmed tasks for the system console tailored to different CPCs under control of the common operational control interface at the system console, the common operational interface including:

selecting by the console operator at least one of said plurality of CPCs for performing one or more common operational control functions,

displaying at the system console a plurality of function indications, a function indication being associated

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with a common operational control function selectable by a console operator who is viewing displayed function indications at the system console,

prompting the console operator by a console control program to select one of said displayed function indications provided by the displaying step, a selected function indication having an associated common operational control function, and

communicating by the control console to each selected CPC a request to perform the associated common operational control function by initiating execution by the selected CPC of an associated operational task, whereby a single operational

control interface at a single console provides operational control over all CPCs at a computer installation by selecting, communicating and executing diversely programmed tasks for diverse CPCs at the computer installation.

The Examiner relies on the following references:

|                  |           |               |
|------------------|-----------|---------------|
| Fox et al. (Fox) | 4,075,693 | Feb. 21, 1978 |
| White            | 5,428,782 | June 27, 1995 |

Claims 1, 2 and 4 through 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over White in view of Fox.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the briefs<sup>1</sup> and the answers<sup>2</sup> for the respective details thereof.

**OPINION**

We will not sustain the rejection of claims 1, 2 and 4 through 7 under 35 U.S.C. § 103.

The Examiner has failed to set forth a ***prima facie*** case. It is the burden of the Examiner to establish why one having ordinary skill in the art would have been led to the claimed invention by the express teachings or suggestions found in the prior art, or by implications contained in such teachings or suggestions. ***In re Sernaker***, 702 F.2d 989, 995, 217 USPQ 1, 6 (Fed. Cir. 1983). "Additionally, when determin-

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<sup>1</sup> Appellants filed an appeal brief on July 31, 1996. Appellants filed a reply brief on December 6, 1996. The examiner considered and entered the reply brief as stated in the supplemental examiner's answer mailed February 24, 1997.

<sup>2</sup> The Examiner filed an Examiner's answer on September 6, 1996. The Examiner filed a supplemental Examiner's answer on February 24, 1997.

ing obviousness, the claimed invention should be considered as a whole; there is no legally recognizable 'heart' of the invention." ***Para-Ordnance Mfg. v. SGS Importers Int'l, Inc.***, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995), ***cert. denied***, 519 U.S. 822 (1996) ***citing W. L. Gore & Assoc., Inc. v. Garlock, Inc.***, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983), ***cert. denied***, 469 U.S. 851 (1984).

On pages 7 through 9 of the brief, Appellants argue that neither White nor Fox teaches or suggests "selecting by the console operator at least one of said plurality of CPCs for performing one or more common operational control functions" as per claim 1. Appellants further argue that neither White nor Fox teaches or suggests

communicating by the control console to each selected CPC a request to perform the associated common operational control function by initiating execution by the selected CPC of an associated operational task, whereby a single operational control

interface at a single console provides operational control over all CPCs at a computer installation by selecting, communicating and executing diversely programmed

tasks for diverse CPCs at the computer installation as recited in Appellants' claim 1. In the reply brief on pages 7 and 8, Appellants argue that Fox communicates a message to another processor and the message is communicated after a request has been set by a console to the configuration and control unit (CACU) and after the request has been executed by the CACU setting up a path to the selected processor. Appellants point out that Fox does not communicate console requests to a selected CPC to form the request as required by Appellants' claim 1. Appellants point out that Fox operates totally differently in that Fox communicates console requests affecting other systems to its CACU processor which performs a request for the system, because its system cannot perform such requests, and the requests are not performed by a selected CPC.

Appellants further point out on pages 8 and 9 of the reply brief that neither Fox nor White teaches or suggests "communicating by the control console to each selected CPC a request to perform the associated common operational control function" as required by Appellants' claim 1. Appellants

point out that Fox's operational control functions are requested

to the CACU, and performed by the CACU and cross-point switches. They are not sent to, or performed by, a selected CPC.

Upon our review of the references, we note that White is not concerned with communicating by a control console to each selected CPC a request to perform the associated common operational control function. White is directed to a system and method for enabling a plurality of computers to cooperatively process various application software. Turning to Fox, we note that Fox operates in a completely different manner than what is being claimed by appellants' claims. In particular, Fox discloses in column 16, lines 60 through 64, that any processor can get itself connected to the CACU by issuing a selected instruction, such as an IBM S/360 Start I/O instruction (SIO) in which the CACU is addressed by a unique address in the control unit field of the instruction. Fox further discloses in column 16, lines 64 through 68, that

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the connection is then made between the CACU and the processor in a conventional manner that processor to control unit connections are made on a conventional data processing system. Fox further discloses in column 17, lines 4 through 12, that once the processor is connected, it transmits its commands and/or data to the CACU, and they are performed or transmitted by the CACU to its addressed outboard

units. When the processor stops the transmission or interrupts its transmission beyond the predetermined time period, the connection is broken and the CACU becomes non-busy and thereby is selectable by any processor which thereafter issues an SIO instruction for the CACU.

Therefore, we find that neither White nor Fox teaches or suggests "communicating by the control console to each selected CPC a request to perform the associated common operational control function" as recited in Appellants' claim 1.

We are not inclined to dispense with proof by evidence when the proposition at issue is not supported by a



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teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a **prima facie** case. *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984); *In re Knapp-Monarch Co.*, 296 F.2d 230, 232, 132 USPQ 6, 8 (CCPA 1961); *In re Cofer*, 354 F.2d 664, 668, 148 USPQ 268, 271-72 (CCPA 1966). Furthermore, our reviewing court states in *Piasecki*, 745 F.2d at 1472, 223 USPQ at 788, the following:

The Supreme Court in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). . . 148 USPQ 459 (1966), focused on the procedural and evidentiary processes in reaching a

conclusion under section 103. As adapted to **ex parte** procedure, *Graham* is interpreted as continuing to place the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under section 102 and 103 [**citing In re Warner**, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)].

We have not sustained the rejection of claims 1, 2 and 4 through 7 under 35 U.S.C. § 103. Accordingly, the Examiner's decision is reversed.

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***REVERSED***

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|---------------|-----------------------------|---|-------------|
|               | ERROL A. KRASS              | ) |             |
|               | Administrative Patent Judge | ) |             |
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|               |                             | ) | BOARD OF    |
| PATENT        |                             | ) |             |
|               | LEE E. BARRETT              | ) | APPEALS AND |
|               | Administrative Patent Judge | ) |             |
| INTERFERENCES |                             | ) |             |
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|               |                             | ) |             |
|               | MICHAEL R. FLEMING          | ) |             |
|               | Administrative Patent Judge | ) |             |

MRF:psb

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Bernard M. Goldman  
Large Scale Computing Division  
Intellectual Property Law  
Mail Station P903  
522 South Road  
Poughkeepsie, NY 12601-5400